

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

BUNGIE, INC., a Delaware corporation,

Plaintiff

v.

AIMJUNKIES.COM, a business of unknown
classification; PHOENIX DIGITAL GROUP
LLC, an Arizona limited liability company;
JEFFREY CONWAY, an individual; DAVID
SCHAEFER, an individual; JORDAN GREEN,
an individual; and JAMES MAY, an individual,

Defendants.

Cause No. 2:21-cv-0811 TSZ

**REPLY IN SUPPORT OF
DEFENDANTS' MOTION TO
EXTEND DISCOVERY
CUTOFF AND DISCOVERY
MOTION DATES**

**Note on Motion Calendar:
March 3, 2023**

Responsive to Bungie's Opposition (Dkt#91) and in further support of their Motion to Extend Discovery Cutoff and Discovery Motion Dates, Defendants reply as follows:

In a transparent "straw man" strategy, Bungie bizarrely claims that Defendants' motion is really an "apparent motion for a protective order," and then wastes time arguing against a motion Defendants have not yet made. Defendants' motion is simply what it states on its face. Defendants simply request that the dates for the filing of discovery related motions and for completing discovery be extended. This Court has both inherent and statutory authority under Rule 26(b), Fed.R.Civ.P. to control its docket and to issue orders related to discovery, whether "on motion or on its own." Fed.R.Civ.P. 26(b)(2)(c). Bungie's claim that this Court somehow does not have the authority to provide the requested relief because Defendants did not specifically point out this Court's inherent and statutory authority to control its own docket is preposterous.

1 The various cases Bungie cites in its opposition demonstrate only that the court does
 2 not abuse its discretion in *denying* requests to extend discovery when it concludes such is
 3 unneeded. *None* of these cases stands for the proposition that a court, such as this Court,
 4 *cannot* extend discovery or other dates in its own discretion and for reasons of its own.
 5 Defendants are aware of no case holding that a district court errs in granting more time for
 6 discovery or otherwise modifying its own schedule.

7 Bungie's claim that Defendants have been dilatory in discovery is false. In its July 25,
 8 response to Defendants' document requests, (true and correct copy attached as Exhibit A),
 9 Bungie, in response to several requests related to the counterclaims now pending, objected on
 10 various grounds including that they were "seeking documents neither relevant to the claim or
 11 defense of any party nor reasonably proportional to the needs of the case." (See, e.g.,
 12 response to Requests Nos. 13-20 that seek, in part, records related to Defendants'
 13 counterclaims.) In a "meet and confer" session conducted September 6, 2022, Bungie
 14 continued to insist that Defendants' discovery requests were still "irrelevant" and "not
 15 reasonably proportional" to the claims and defenses which, at that time, did not include the
 16 counterclaims.¹

17 It was not until February 3, 2023 that this Court largely denied Bungie's motion to
 18 dismiss Defendants' amended counterclaims and permitted all but one of those counterclaims
 19 to proceed. At that time, it was impossible under the then applicable scheduling order
 20 (Dkt#44) to serve and complete discovery related to the counterclaims (which would no
 21 longer be subject to Bungie's claim that they are, "neither relevant to the claim or defense of
 22 any party nor reasonably proportional to the needs of the case") as the discovery cutoff date
 23 (February 21, 2023) did not permit the 30 days needed for response. Again Bungie could
 24 simply thumb its nose at Defendants' requests, secure in the knowledge that Defendants
 25 would be left with no remedy against such tactics.

26 Again, Defendants' motion simple requests adequate time to conduct discovery into
 27 the counterclaims, which counterclaims were not formally permitted to proceed until February
 28 3, 2023, just one month ago. Bungie has not and cannot show any prejudice in permitting

1 At that time Defendants served their document requests and Bungie raised its relevancy objections,
 Defendants' Motion to Dismiss Bungie's Amended Complaint had not yet been decided and no Answer and
 Counterclaim had yet been filed.

1 proper discovery, considering trial is not scheduled until December 4, 2023 and more than
2 sufficient time remains.

3 Finally, Bungie's characterization of Defendants' motion as one for a protective order
4 and its demand for fees are baseless. Defendants simply seek this Court's input and direction
5 to avoid needless waste and argument over matters that ordinarily should be worked out
6 among counsel. Given that Bungie refuses to consider limitations on the depositions it seeks
7 to take and cannot identify what additional information, beyond that reasonably related to the
8 counterclaims, it could not have obtained before despite at least five days of depositions of
9 each defendant, Defendants will be requesting a telephonic motion pursuant to LCR 7(i) to
10 address the scheduling and scope of Bungie's now noticed depositions, set for the week of
11 March 6, 2023.

12 For all the foregoing reasons, Defendants' request that the dates for filing motions
13 related to discovery and completing discovery of the counterclaim issues be extended to May
14 25 2023, and June 23, 2023, respectively.

15 Such action by this Court is respectfully requested.

16 Dated March 3, 2023.

17 /s/ Philip P. Mann

18 Philip P. Mann, WSBA No: 28860

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